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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN JOSEPH PERRY,

Defendant and Appellant.

H035338

(Santa Clara County  
Super. Ct. No. CC947520)

Defendant John Joseph Perry appeals from a sentence after entering a plea of nolo contendere to one felony count of possession of a controlled substance (methamphetamine) (Health & Saf. Code, § 11377, subd. (a)),<sup>1</sup> one misdemeanor count of possession of controlled substance paraphernalia (glass pipe) (§ 11364), and one misdemeanor count of using or being under the influence of a controlled substance (methamphetamine) (§ 11550, subd. (a)). Perry further admitted allegations that he had four prior convictions, including one strike for assault with a deadly weapon against a peace officer (Pen. Code, § 245, subd. (c)) and three prior prison terms for, respectively, auto theft (Veh. Code, § 10851, subd. (a)), possession of a controlled substance (§ 11377, subd. (a)) and domestic violence (Pen. Code, § 273.5, subd. (a)). After his *Romero*<sup>2</sup> motion was granted, the trial court suspended imposition of sentence and placed Perry on

<sup>1</sup> All further unspecified statutory references are to the Health and Safety Code.

<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

three years formal probation on condition that he serve 365 days in county jail with total credits of 357 days.

As Perry pleaded no contest to the charges, we derive the facts from the probation report and other documents in the record on appeal.

We appointed counsel to represent Perry in this court. Appointed counsel filed an opening brief which states the case and the facts, but raises no specific issues. We notified Perry of his right to submit written argument in his own behalf within 30 days. That period has elapsed, and we have received no written argument from Perry.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

On June 27, 2009, at approximately 8:17 a.m., San Jose Police Officer Erik Martin observed a vehicle obstructing a northbound lane of Monterey Highway. Martin stopped behind the vehicle and made contact with Perry, who was sitting in the driver's seat. A female passenger was in the front passenger seat. Martin also noted that Perry's vehicle was parked in a red zone.

Martin asked Perry for his driver's license, and as Perry was reaching into his back pocket, Martin noticed that he was trying to push a black sunglasses case further under his crotch with his other hand. The officer asked Perry to hand him the case and Perry complied. The case was made of a soft fabric, and as he handled it, Martin could feel a small object inside, which felt like a three inch long cylinder with a sphere at one end. The object within the case also made contact with a ring on Martin's finger, and from the sound produced, Martin believed the object was made of glass. At that time, Martin believed there was a smoking device inside the case.

Martin also observed that Perry was displaying signs of being under the influence of a stimulant, specifically rapid speech, "glossy"<sup>3</sup> eyes and abnormally reactive pupils. The officer placed the sunglasses case on the roof of the car and called for additional

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<sup>3</sup> Presumably, the officer meant "glassy."

units to respond to his location. Martin asked the female passenger for her identification, and she acted “extremely nervous,” fumbling for her purse, and Martin noticed that she, too, appeared to be under the influence of a stimulant.

When another officer arrived, Martin opened the sunglasses case and found a glass smoking pipe. He asked Perry to exit the vehicle, which he determined was registered in Perry’s name, and placed both Perry and his passenger under arrest. Martin searched Perry’s vehicle for evidence of the narcotics crimes as well as for inventory purposes, as he intended to impound it because it was illegally parked and a traffic hazard. In that search, Martin discovered a baggie containing off-white crystals later determined to be methamphetamine in the center console. The trunk contained a digital scale disguised to look like an iPhone. In the passenger’s purse, Martin discovered two more baggies with methamphetamine, one in a pack of cigarettes and one tucked into a credit card slot in her wallet.

Perry waived his right to a preliminary hearing and entered a plea of not guilty. After Perry’s motion to suppress evidence pursuant to Penal Code section 1538.5 was denied, he changed his plea to no contest in exchange for maximum sentence of 32 months with the right to bring a *Romero* motion prior to sentencing.

The trial court granted Perry’s *Romero* motion and suspended imposition of sentence for three years. Perry was placed on three years’ formal probation on condition that he serve 365 days in county jail, with 237 days custody credit and 118 days conduct credits.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the whole record and have concluded there is no arguable issue on appeal.

## **II. DISPOSITION**

The judgment is affirmed.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.